In the High Court of Judicature for Rajasthan
At
Jaipur Bench, Jaipur

O R D E R

In

S.B. Criminal Revision Petition No.1066/2001
Batti Lal Vs. State of Rajasthan and others

Date Of Order :: 23.11.2007

P R E S E N T
Hon'ble Mr. Justice Jitendra Ray Goyal

Mr. Mukesh Pal on behalf of
Mr. Anurag Sharma, for complainant-petitioner.
Mr. S.N. Gupta, Public Prosecutor for State.
Mr. S.R. Jatav with
Mr. Mukesh Verma, for accused respondents.

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By the Court :-

This revision petition under section 397 read with 401 of the Code of Criminal Procedure has been filed by complainant-petitioner Batti Lal against the order dated 20/11/2001 passed by Additional Sessions Judge (Fast Track), Gangapur City in

Sessions Case No.31/2001 whereby application filed by the Public Prosecutor under section 319 of the Code of Criminal Procedure has been rejected.

2. I have heard learned counsel for complainant-petitioner as well as accused respondents and the learned Public Prosecutor for the State and have also gone through the record of the court below.

3. Learned counsel appearing for the complainant-petitioner inter alia contended that charge-sheet was filed against accused respondents No.2 to 8 and charge was framed by the trial for the offence under section 306 IPC and thereafter the prosecution has examined as many as eleven witnesses including the complainant Batti Lal and Smt. Geeta (PW6), wife of the deceased Nathi who

categorically stated that all the accused respondents acting in consult had committed the murder of the deceased Nathi, therefore, charge ought to have been amended and other respondents No.9 to 11 should have been arrayed as accused persons. Reliance has been placed on **Rajendra Singh Vs. State of U.P. and another**, reported in **(2007) 7 Supreme Court Cases 378** and **Rakesh and another Vs. State of Haryana**, reported in **(2001) 6 Supreme Court Cases 248**.

4. Learned counsel appearing for accused respondents contended that object of section 319 of the Code of Criminal Procedure is not to fasten the innocent persons in the crime on the basis of improvement made by the witnesses in their court statements, therefore, caution has been given by the

Hon'ble Apex Court that powers under section 319 of the Code of Criminal Procedure should be exercised sparingly with the object to meet the ends of justice. It was then contended that it is apparent from the statements of the witnesses including the statement of key witness Geeta (PW6), wife of the deceased, that they are deliberately making the improvement from their earlier statements given to the police. It was also contended that according to the police statement of Geeta, her husband came at the residence in the night at about 9:30 and on her asking, deceased Nathi narrated the details of the happenings in the 'panchayat', thereafter she slept and in the morning when she awaked her husband was not in the house and thereafter she received information that

dead body of her husband was found in the well, she stated to the police that her husband committed suicide out of fear whereas in the court statement she made drastic improvement and could not offer any reasonable explanation about the improvement, infirmities and contradictions from her police statement. It was further contended that the trial of the prosecution was almost complete and at the stage of statement of accused persons under section 313 of the Code of Criminal Procedure this belated application by the prosecution has been moved at the behest of the complainant.

5. I have considered the rival submissions made at the bar. There is no doubt that power under section 319 of the Code of Criminal Procedure is conferred on

the court to ensure that all those guilty of an offence be brought to book and no one who appears to be guilty should be permitted to escape from the trial but simultaneously the court is also duty bound to see that innocent person may not be harassed and victimized in the garb of the provisions of section 319 of the Code of Criminal Procedure. Hon'ble the Apex Court in **Rakesh and another's case (supra)** observed that power under section 319 of the Code of Criminal Procedure is to be used sparingly but it does not mean that in a proper case where evidence is available accused who appears to have committed the offence is not to be arrayed. In **Rajendra Singh' case (supra)** it was held by the Hon'ble Apex Court that discretion has been left with the trial court so as to enable it

to exercise its jurisdiction under this section. It was further observed that “expression” appearing in section 319 of the Code of Criminal Procedure indicates the application of mind by the court to the evidence that has come before it and taking the decision to proceed under section 319 of the Code of Criminal Procedure or not.

6. In the instant case, the trial court has considered the submissions in the light of the evidence recorded before it and found that the evidence is contradictory and also not sufficient for adding some new person as accused or to add, alter and amend the charge. The power conferred by virtue of section 319 of the Code of Criminal Procedure on the trial court is discretionary and keeping in view the material available on

record I do not find any reason to hold that there is any illegality or manifest error in the impugned order.

7. Consequently, this revision petition, being devoid of merit, is hereby dismissed. Record of the court below be sent back immediately.

(J.R. Goyal),J.

VS Shekhawat/-
Jr.P.A.